



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317) 233-3091
1-800-228-6013
www.IN.gov/pac

November 7, 2012

Shepell Orr
DOC 219660
One Park Row
Michigan City, Indiana 46360

Re: Formal Complaint 12-FC-306; Alleged Violation of the Access to Public Records Act by the Lake County Public Defender

Dear Mr. Orr:

This advisory opinion is in response to your formal complaint alleging Lake County Public Defender ("Public Defender") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* David R. Schneider, Attorney, responded on behalf of the Public Defender. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on September 14, 2012, you submitted a written request to the Public Defender for a copy of your file that is maintained by the agency. On September 21, 2012, Mr. Schneider acknowledged the receipt of your request in writing and advised the records would be required to be reviewed prior to disclosure. As of October 15, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further provide that you have yet to receive any records that are responsive to your request.

In response to your formal complaint, Mr. Schneider advised that a copy of your trial file was mailed to you on October 26, 2012.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See I.C. § 5-14-3-1. The Public Defender is a public agency for the purposes of the APRA. See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Public Defender's public records during regular business hours unless the records are

excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here, the Public Defender received your written request on September 14, 2012, to which it responded in writing on September 21, 2012. As such, it is my opinion that the Public Defender complied with the requirements of section 9 of the APRA in response to your request.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

As applicable here, the Public Defender timely acknowledged the receipt of your request on September 21, 2012. At that time, Mr. Schneider indicated that the agency has located your trial file and a copy would be provided to you after the records had been reviewed. A copy of your file was mailed to you on October 26, 2012. In light of the requirement that all records be reviewed prior to disclosure under the APRA, that the Public Defender complied with section 9 of the APRA in response to your request, and the Public Defender's continuing responsibility to maintain the normal duties and functions of the agency, it is my opinion that the Public Defender provided all records that were responsive to your request in a reasonable period of time.

CONCLUSION

For the foregoing reasons, it is my opinion that the Public Defender did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: David R. Schneider